

Message Text

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TAGS: ETRD, GATT, US

SUBJECT: GATT NOTIFICATION ON SUPREME COURT'S ZENITH
DECISION

REF: GENEVA 10157

1. PLEASE REQUEST THE GATT SECRETARIAT TO CIRCULATE THE
FOLLOWING NOTIFICATION TO CONTRACTING PARTIES AS A
SUPPLEMENT TO L/4508 AND L/4543:

(A) ON JUNE 21, 1978, THE SUPREME COURT OF THE UNITED
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STATES UNANIMOUSLY AFFIRMED THE COURT OF CUSTOMS AND
PATENT APPEALS DECISION IN ZENITH RADIO CORP. V. UNITED
STATES. THE COURT FOUND THAT JAPAN DOES NOT CONFER A
"BOUNTY OR GRANT" WITHIN THE MEANING OF U.S. COUNTER-
VAILING DUTY LEGISLATION BY FAILING TO IMPOSE A COMMODITY
TAX ON EXPORTS, WHILE IMPOSING THE TAX ON PRODUCTS SOLD
IN JAPAN.

(B) IN REACHING ITS DECISION UPHOLDING THE GOVERNMENT'S POSITION, THE COURT HELD THAT:

- THE SECRETARY OF THE TREASURY'S INTERPRETATION OF THE U.S. COUNTERVAILING DUTY LAW, WHICH HAS BEEN CONSISTENTLY MAINTAINED SINCE THE LAW'S ENACTMENT IN 1897, IS ENTITLED TO GREAT WEIGHT;

- THE LEGISLATIVE HISTORY OF THE STATUTE SUGGESTS THAT THE TERM "BOUNTY" WAS NOT INTENDED TO ENCOMPASS THE NON-EXCESSIVE REMISSION OF AN INDIRECT TAX;

- THE SECRETARY'S INTERPRETATION WAS REASONABLE IN LIGHT OF THE STATUTORY PURPOSE OF THE COUNTERVAILING DUTY LAW, WHICH WAS CHARACTERIZED AS BEING DESIGNED TO OFFSET AN UNFAIR COMPETITIVE ADVANTAGE. HERE THE COURT STATED THAT THE SECRETARY IN AN 1898 RULING REASONABLY VIEWED THE REMISSION AS A REASONABLE MEASURE FOR AVOIDING THE DOUBLE TAXATION OF IMPORTS.

- IN VIEW OF THE FIVE REENACTMENTS OF THE STATUTE WITHOUT MODIFICATIONS OF THE RELEVANT LANGUAGE, THE INCORPORATION OF THE SECRETARY'S POSITION IN THE GATT, AND THE "DIFFICULT, IF NOT IMPOSSIBLE" TASK OF MEASURING THE ULTIMATE ECONOMIC EFFECT OF REMITTING INDIRECT TAXES, THE UNCLASSIFIED

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COURT SHOULD NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE SECRETARY.

(C) NORMAL CUSTOMS APPRAISEMENT AND LIQUIDATION OF THE AFFECTED JAPANESE ELECTRONICS PRODUCTS WILL RESUME SHORTLY UPON ISSUANCE OF THE FINAL COURT ORDER.

2. THE U.S. REP MAY DRAW ON THIS NOTIFICATION IN MAKING AN ORAL REPORT TO THE JULY 24 COUNCIL UNDER "OTHER BUSINESS" AS SUGGESTED IN REFTL. CHRISTOPHER

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